S.B. Civil Misc. Appeal No.857/2005

Smt. Leela Soni vs. Ghanshyam Soni and another.

Date : 6.9.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. Karunanidhi Vyas, for the appellant.

- - - - -

Heard learned counsel for the appellant.

The appellant is aggrieved against the order dated 4.6.2005 by which the appellant's application under Order 39 Rules 1 and 2 CPC was dismissed by the trial court.

Brief facts of the case are that according to the plaintiff/appellant, he purchased the suit property by agreement to sale dated 9.2.1998, however, the sale deed was registered in his favour on 26.3.2001. The seller – respondent no.1 though entered into agreement to sell the property to the plaintiff/appellant on 9.2.1988, mortgaged the same property on 8.10.1998 with the respondent no.2 bank. The respondent no.2 filed the petition for recovery of loan amount by sale of mortgaged property before the Debt Recovery Tribunal, Jaipur where the decree has been passed against the respondent no.1. In execution of the said decree of the Tribunal, the bank has proceeded to sell the house in question, therefore, the plaintiff filed the suit for injunction against the sale of the plaintiff's

house by the respondent bank in execution of decree/order passed by the Debt Recovery Tribunal. In alternative, for recovery of the amount and also for damages on the plea that the plaintiff is bonafide purchaser for value and, therefore, his house cannot be sold and in the alternative, he is entitled for other reliefs. In the suit, the plaintiff filed application for grant of temporary injunction which was dismissed by the trial court. Hence, this appeal.

I have considered the submissions of learned counsel for the appellant.

In view of the admitted fact that the property was mortgaged with the respondent no.2 bank on 8.10.1998 and the respondent no.1 took loan over this property and the sale deed in favour of the plaintiff was registered only on 26.3.2001 after the property was mortgaged, therefore, on these admitted facts of the plaintiff, the trial court was right in dismissing the plaintiff's application under Order 39 Rules 1 and 2 CPC.

According to learned counsel for the appellant, the appellant has also initiated criminal proceedings against the respondent no.1. That fact also is of no consequence in the present matter as the respondent no.2 bank is executing the decree for the property which was mortgaged to it and if the plaintiff was cheated by the defendant borrower, he will face the consequences.

I do not find any merit in this appeal and accordingly, this appeal is dismissed.

(PRAKASH TATIA), J.

S.Phophaliya